



# **R. 61-92, Part 280: UNDERGROUND STORAGE TANK CONTROL REGULATIONS**

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(This regulation replaces and supercedes any former regulations)

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## **DISCLAIMER**

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**R. 61-92 SOUTH CAROLINA UNDERGROUND STORAGE TANK CONTROL REGULATIONS**

(These regulations are promulgated under Title 44, Chapter 2 of the 1976 South Carolina Code of Laws, as amended.)

**PART 280: TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)**

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PART 280 – TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

**SUBPART A -- Program Scope and Interim Prohibition**

**SECTION 280.10. APPLICABILITY.**

(a) The requirements of this Part apply to all owners and operators of an UST system as defined in Section 280.12 except as otherwise provided in paragraphs (b), (c), (d), and (e) of this section. Any UST system listed in paragraph (c) of this section must meet the requirements of Section 280.11.

(b) The following UST systems are excluded from the requirements of this Part:

(1) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act.

(3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(4) Any UST system whose capacity is 110 gallons or less.

(5) Any UST system that contains a de minimis concentration of regulated substances.

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) Deferrals. Subparts B, C, D, E, and G do not apply to any of the following types of UST systems:

(1) Wastewater treatment tank systems;

(2) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following);

(3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50 Appendix A;

(4) Airport Hydrant fuel distribution systems; and

(5) UST systems with field-constructed tanks.

(d) Deferrals. Subpart D does not apply to any UST system that stores fuel solely for use by emergency power generators.

(e) No person may place regulated substances and no owner or operator may cause regulated substances to be placed into an UST system for which the owner or operator does not hold a currently valid registration or permit.

## **SECTION 280.11. INTERIM PROHIBITION FOR DEFERRED UST SYSTEMS.**

(a) No person may install an UST system listed in Section 280.10(c) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding paragraph (a) of this section, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

[Note: The National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used as guidance for complying with paragraph (b) of this section.]

## **SECTION 280.12. DEFINITIONS.**

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil

resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

"Coastal zone" means all coastal waters and submerged lands seaward to the State's jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas. These counties are Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown.

"Community Water System (CWS)" means a public water system that serves at least 15 service connections used by year-round residents of the area served by the system; or regularly serves at least 25 year-round residents. The following are included as part of the community water system:

- (a) The wellhead for groundwater and/or intake point(s) for surface water;
- (b) Collection, treatment, storage, and distribution facilities that are part of the community water system; and
- (c) The piping distribution system that delivers the water to the community.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purposes of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumptive use" with respect to heating oil means consumed on the premises.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Critical area" means any of the following: (1) coastal waters, (2) tidelands, or (3) beach/dune systems, as defined by the Office of Ocean and Coastal Resource Management Regulations.

"Department" means the South-Carolina Department of Health and Environmental Control.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

(a) the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

(b) (1) either a continuous on-site physical construction or installation program has begun; or,

(2) the owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for physical construction at the site or installation of the tank system to be completed within a reasonable time.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production products.

"Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water.)

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in Section 101(14) of The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

“Interstitial space” means the opening formed between the inner and outer wall of a UST system with double-walled construction or the opening formed between the inner wall of a containment sump and the UST system component that it contains.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), and for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"Navigable waters" means those waters which are now navigable, or have been navigable at any time, or are capable of being rendered navigable by the removal of accidental obstruction, by rafts of lumber or timber by small pleasure or sport fishing boats. Navigability is defined in R.19-450, Permits for Construction in Navigable Waters.

"New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988. (See also "Existing Tank System").

"Noncommercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Subpart G.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

(a) in the case of an UST system in use on November 8, 1984, or brought into use after that date, a person who owns an UST system used for storage, use, or dispensing of regulated substances; or

(b) in the case of any UST system in use before November 8, 1984, but no longer in use on that date, a person who owned such UST immediately before the discontinuation of its use; or

(c) a person who has assumed legal ownership of the UST system through the provisions of a contract of sale or other legally binding transfer of ownership.

"Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "Piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Potable Drinking Water Well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which:

- (a) Supplies water for a non-community public water system, or
- (b) Otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses).
- (c) Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

"Regulated substance" means:

- (a) any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and
- (b) petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuels oils, lubricants, petroleum solvents, and used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore a tank or UST system component that has caused a release of product from the UST system.

“Replace” means to remove a UST system or UST system component and to install another UST system or UST system component in its place.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"SARA" means the Superfund Amendments and Reauthorization Act of 1986.

"Secondary containment" means an impervious layer of materials which is installed around a tank or system of tanks, so that any volume of regulated substances which may be released from a tank will be prevented from contacting the environment outside said impervious layer for the period of time necessary to detect and recover released regulated substances. Materials or devices used to provide a secondary containment may include concrete, impervious liners, double-wall tanks or other materials or devices, singularly or in combination, which is approved by the Department.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

“Under-Dispenser Containment (UDC)” means a component underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater. Such containment must:

- (a) Be liquid-tight on its sides, bottom, and at any penetrations;
- (b) Be compatible with the substance conveyed by the piping; and
- (c) Allow for visual inspection and access to the components in the containment system and/or be monitored.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) Tanks used for storing heating oil for consumptive use on the premises where stored;

(c) Septic tank;

(d) Pipeline facility (including gathering lines) regulated under:

(1) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or

(2) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or

(3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in paragraph (d)(1) or (d)(2) of this definition;

(e) Surface impoundment, pit, pond, or lagoon;

(f) Storm-water or wastewater collection system;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in paragraphs (a) through (i) of this definition.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

"UST system" or "Tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

## **SUBPART B UST Systems: Design, Construction, Installation, Notification and Permitting**

### **SECTION 280.20. PERFORMANCE STANDARDS FOR NEW UST SYSTEMS.**

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST systems is used to store regulated substances, all owners and operators of new UST systems must obtain permits in accordance with Section 280.23 and meet the following requirements.

(a) Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The tank is constructed of fiberglass-reinforced plastic or

[Note: The following industry codes may be used to comply with paragraph (a)(1) of this section: Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriter's Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."]

(2) The tank is constructed of steel and cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in Section 280.31(c); and

(iv) Cathodic protection systems are operated and maintained in accordance with Section 280.31 or according to guidelines established by the Department; or

[Note: The following codes and standards may be used to comply with paragraph (a)(2) of this section:

(A) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

(B) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";

(C) Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

(D) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."]

(3) The tank is constructed of a steel-fiberglass-reinforced-plastic composite; or

[Note: The following industry codes may be used to comply with paragraph (a)(3) of this section: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."]

(4) The tank is constructed of metal without additional corrosion protection measures provided that:

(i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (a)(4)(i) of this section for the remaining life of the tank; or

(5) The tank construction and corrosion protection are determined by the Department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (a)(1) through (4) of this section.

(b) Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The piping is constructed of fiberglass-reinforced plastic; or

[Note: The following codes and standards may be used to comply with paragraph (b)(1) of this section:

(A) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe";

(B) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(C) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and

(D) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."]

(2) The piping is constructed of steel and cathodically protected in the following manner:

(i) The piping is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in Section 280.31(c); and

(iv) Cathodic protection systems are operated and maintained in accordance with Section 280.31 or guidelines established by the Department; or

[Note: The following codes and standards may be used to comply with paragraph (b)(2) of this section:

(A) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(B) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

(C) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(D) National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."]

(3) The piping is constructed of metal without additional corrosion protection measures provided that:

(i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section for the remaining life of the piping; or

[Note: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems," may be used to comply with paragraph (b)(3) of this section.]

(4) The piping construction and corrosion protection are determined by the Department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (b)(1) through (3) of this section.

(c) Spill and overflow prevention equipment.

(1) Except as provided in paragraph (c)(2) of this section, to prevent spilling and overflowing associated with product transfer to the UST system, owners and operators must use the following spill and overflow prevention equipment:

(i) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(ii) Overflow prevention equipment that will:

(A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

(C) Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

(2) Owners and operators are not required to use the spill and overflow prevention equipment specified in paragraph (c)(1) of this section if:

(i) Alternative equipment is used that is determined by the Department to be no less protective of human health and the environment than the equipment specified in paragraph (c)(1)(i) or (ii) of this section; or

(ii) The UST system is filled by transfers of no more than 25 gallons at one time.

(d) Product transfer equipment. To decrease vapor emissions associated with product transfer to the UST system, all new UST systems must comply with the product transfer equipment requirements as follows:

(1) All tank systems installed after December 22, 1996, must be equipped with a drop tube that enters the top of the tank at the fill port and extends to within 6 inches of the bottom of the tank; or

(2) All tank systems installed before or on December 22, 1996, must be equipped with a drop tube that enters the top of the tank at the fill port and extends to within one foot of the tank bottom by December 22, 2001; or

(3) Tank systems used for the storage of used oils are not required to be equipped with a drop tube.

(e) Installation. All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

[Note: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of paragraph (e) of this section:

(i) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System"; or

(ii) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

(iii) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."]

(f) Certification of installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with paragraph (d) of this section by providing a certification of compliance to the Department on the Permit to Operate application form.

(1) The installer has been certified by the tank and piping manufacturers; or

(2) The installer has been certified or licensed by the Department; or

(3) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or

(4) The installation has been inspected and approved by the Department; or

(5) All work listed in the manufacturer's installation checklists has been completed; or

(6) The owner and operator have complied with another method for ensuring compliance with paragraph (e) of this section that is determined by the Department to be no less protective of human health and the environment.

(g) Effective with the enactment of this regulation, each new or replacement underground storage tank, or piping connected to any such new tank, that is within 1,000 feet of any existing community water system or any existing potable drinking water well must be secondarily contained and monitored for leaks. In the case of a replacement of a previously installed underground storage tank or previously installed piping connected to the underground storage tank, the secondary containment and monitoring shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system. In addition, each new or replacement motor fuel dispenser system installed within 1,000 feet of any existing community water system or any existing potable drinking water well must have under-dispenser containment. New piping associated with this installation must be secondarily contained. These requirements do not apply to repairs meant to restore an underground storage tank, pipe, or dispenser to operating condition except that when piping repairs over a consecutive 12 month period constitute more than 25 percent of the piping by length, the entire piping run must be replaced with secondarily contained piping. In the case of dispenser replacement on suction piping systems that meet the requirements of Section 280.41(b)(2)(i – v), this requirement does not apply if the replacement does not involve any connectors, risers, or piping below the union or check valve. Secondary containment systems shall be designed, constructed, installed and maintained to:

(1) Contain regulated substances released from a UST system until they are detected and removed; and

(2) Prevent a release of regulated substances to the environment at any time during the operational life of the UST system; and

(3) Be monitored monthly for a release in accordance with Section 280.43 (g). The requirements of this section also apply to new or replacement underground storage tank systems that serve emergency generators.

(h) Secondary containment required. All new tank systems which are installed within 100 feet of an existing water supply well, a coastal zone critical area, or state navigable waters, must install an approved method of secondary containment.

(i) Release detection. Release detection, conducted in accordance with Subpart D, must begin when regulated substances are introduced into the tank system.

## **SECTION 280.21. UPGRADING OF EXISTING UST SYSTEMS.**

(a) Alternatives allowed. Not later than December 22, 1998, all existing UST systems must comply with one of the following requirements:

(1) New UST system performance standards under Section 280.20;

(2) The upgrading requirements in sections (b) through (d) of this section; or

(3) Closure requirements under Subpart G of this Part, including applicable requirements for corrective action under Subpart F.

(b) Tank upgrading requirements. Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

(1) Interior lining. A tank may be upgraded by internal lining if:

(i) The lining is installed in accordance with the requirements of Section 280.33, and

(ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(2) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of Section 280.20(a)(2)(ii), (iii), and (iv) and the integrity of the tank is ensured using one of the following methods:

(i) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

(ii) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with Section 280.43(d) through (h); or

(iii) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of Section 280.43(c). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three (3) and six (6) months following the first operation of the cathodic protection system; or

(iv) The tank is assessed for corrosion holes by a method that is determined by the Department to prevent releases in a manner that is no less protective of human health and the environment than paragraphs (b)(2)(i) through (iii) of this section.

(3) Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

(i) The lining is installed in accordance with the requirements of Section 280.33; and

(ii) The cathodic protection system meets the requirements of Section 280.20(a)(2)(ii), (iii), and (iv).

[Note: The following codes and standards may be used to comply with this section:

(A) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";

(B) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection";

(C) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"; and

(D) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."]

(c) Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of Section 280.20(b)(2)(ii), (iii), and (iv).

[Note: The codes and standards listed in the note following Section 280.20(b)(2) may be used to comply with this requirement.]

(d) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in Section 280.20(c).

(e) Product transfer equipment. To decrease vapor emissions associated with product transfer to the UST system, all existing UST systems must comply with product transfer equipment requirements as follows:

(1) All UST systems upgraded after December 22, 1996, must comply with the new UST system product transfer equipment requirements specified in Section 280.20(d)(1); or

(2) All UST systems upgraded before or on December 22, 1996, must be equipped with a drop tube that enters the top of the tank at the fill port and extends to within one foot of the tank bottom by December 22, 2001; or

(3) UST systems used for the storage of used oils are not required to be equipped with a drop tube.

(f) At least 30 days before beginning upgrading of existing UST systems to satisfy the requirements of Section 280.21, or within another reasonable time period determined by the Department, owners and operators must notify the Department of their intent to upgrade the UST system.

## **SECTION 280.22. NOTIFICATION REQUIREMENTS.**

(a) By January 1, 1986 any owner of a tank storing or having stored regulated substances on or before January 1, 1986 shall notify the Department of the existence of such a tank specifying the type, location, storage capacity, age, and uses of such a tank (i.e., operational status at the time of notification) and of any

known past failure(s) and corrective action taken as a result of the failure. The notification shall be made using EPA Form 7530-1 or Department Form DHEC-1917.

(b) For each underground storage tank taken out of operation after January 1, 1974, the owner of such tank shall, within 12 months after the date of enactment of these regulations (R.61-92), notify the Department of the existence of such tanks (unless the owner knows the tank subsequently was removed from the ground). The notification shall be made using EPA Form 7530-1 or Department Form DHEC-3856. The owner of a tank taken out of operation on or before January 1, 1974, shall not be required to notify the Department under this subsection.

(c) Notice under Subparagraph (b) shall specify, to the extent known to the owner:

- (1) The date the tank was taken out of operation;
- (2) The age of the tank on the date taken out of operation;
- (3) The capacity, type and location of the tank; and
- (4) The type and quantity of substances left stored in such tank on the date taken out of operation.

(d) Any owner which brings into operation an underground storage tank after the initial notification period specified under paragraph (a), shall notify the Department within 30 days using the procedures specified in paragraph (a) of this section.

(e) Paragraphs (a) through (d) of this subsection shall not apply to tanks for which notice was given pursuant to Section 103(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(f) Upon receipt of an approvable notification from existing tank owners, the Department will store the notification information for the purpose of managing, and appropriately cross-referencing and indexing the data.

(g) After January 1, 1986, any owner of an existing tank which has not notified with Department in accordance with this section shall be in violation of these regulations.

(h) A regulated tank for which the Department has received an approvable notification is considered to be registered.

(i) The Department may issue, deny, revoke, suspend or modify the registration under such conditions as it may prescribe herein for the operation of any tank.

### **SECTION 280.23. NEW TANKS -- PERMITS REQUIRED**

(a) After January 1, 1986, all new tanks must be permitted. The person who proposes to install a new tank must apply for a construction permit, on a form supplied by the Department or an approved substitute, and possess said permit prior to tank installation and shall meet the new tank design, construction, and installation requirements of Section 280.20.

(b) The person who proposes to place a new tank in operation must apply for an operating permit, on a form supplied by the Department, and possess said permit prior to placing the tank in operation.

(1) The permit to operate application must certify compliance with the following requirements:

- (i) Installation of tanks and piping under Section 280.20(e);
- (ii) Cathodic protection of steel tanks and piping under Section 280.20(a) and (b);
- (iii) Financial responsibility under Subpart H of this Part;
- (iv) Release detection under Sections 280.41 and 280.42; and
- (v) Testing under Section 280.24

(2) All owners and operators of new UST systems must ensure that the installer certifies in the permit to operate application form that the methods used to install the tanks and piping complies with the requirements in Section 280.20(e).

(3) Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's permitting obligations under this section.

(c) After January 1, 1986, any person who installs or operates a new tank without receiving permits will be in violation of these regulations.

(d) The Department may issue, deny, revoke, suspend or modify permits under such conditions as it may prescribe for the operation of any tank.

(e) The Department may classify as ineligible for delivery, deposit, or acceptance of product an underground storage tank where the Department has determined:

- (1) Required spill prevention equipment is not installed; or
- (2) Required overfill protection equipment is not installed; or
- (3) Required leak detection equipment is not installed; or
- (4) Required corrosion protection equipment is not installed; or
- (5) Other conditions the Department deems appropriate.

(f) When the Department determines that an underground storage tank or tanks should be classified as ineligible for delivery, deposit or acceptance of product under paragraph (e) of this section, the Department shall notify the owner/operator of the Department's intent to declare the tank(s) ineligible for delivery, deposit, or acceptance of product if the deficiency is not corrected within seven (7) calendar days.

(g) The Department may classify as ineligible for delivery, deposit, or acceptance of product an underground storage tank if the owner/operator of that tank has been issued a written warning or citation (notice of violation) under any of the following circumstances and the owner/operator has failed to take corrective action within 30 days :

- (1) Failure to properly operate and/or maintain leak detection equipment; or

- (2) Failure to properly operate and/or maintain spill, overfill, or corrosion protection equipment; or
- (3) Failure to maintain financial responsibility;
- (4) Failure to protect a buried metal flexible connector from corrosion.

(h) When the Department determines that an underground storage tank or tanks should be classified as ineligible for delivery, deposit or acceptance of product under paragraph (g) of this section, the Department shall notify the owner/operator of the Department's intent to declare the tank(s) ineligible for delivery, deposit, or acceptance of product if the deficiency is not corrected within seven (7) calendar days

(i) When the out of compliance condition has not been corrected after the seven (7) calendar days established under paragraph (f) or (h) of this section, the Department will declare the tank ineligible for delivery, deposit, or acceptance of product and notify the owner/operator and supplier of the delivery prohibition.

(1) The notification of owner/operator and supplier of a delivery prohibition will be by at least two means of communication (for example: telephone, e-mail, facsimile, or messenger); and

(2) The Department will post the delivery prohibition notice on the Department's Tank Registry website; and

(3) The Department will affix a delivery prohibition notice to the fill port of the affected tank.

(j) It shall be illegal for any person to deliver, deposit, or accept product into a tank where the Department has imposed delivery prohibition and has notified the owner/operator and supplier of the delivery prohibition.

(k) When the owner/operator notifies the Department that the deficiency has been corrected and the Department has verified that the tank(s) is in compliance:

(1) The delivery prohibition will be lifted and the delivery prohibition notice will be removed from the tank fill port within two (2) working days (Monday – Friday) of the notification; and

(2) The Department will notify the owner/operator and the supplier that delivery to the tank may resume; and

(3) The delivery prohibition website posting will be cleared.

(l) The Department retains the discretion to decide whether to identify an underground storage tank as ineligible for delivery, deposit, or acceptance of product based on whether the prohibition is in the best interest of the public. In some cases, prohibition of delivery, deposit, or acceptance of product to an underground storage tank is not in the best interest of the public, even in the case of significant and/or sustained noncompliance (e.g., certain emergency generator underground storage tanks). In other cases, the Department may choose to classify an underground storage tank as ineligible to receive product but then authorize delivery in emergency situations such as natural disasters.

NOTE: Delivery Prohibition does not relieve the owner/operator from administrative enforcement actions due to the out of compliance condition(s).

(m) Any person who plans to install a system of two or more tanks at the same location, may apply for one permit for that system of tanks.

#### **SECTION 280.24. TESTING.**

(a) During installation of tank systems, tanks and piping must be pneumatically and/or hydrostatically tested according to accepted industry standards and the manufacturers' installation instructions.

(b) The Department may require the operator to hydrostatically test for tightness, when accurate release detection system records have not been maintained as specified in Subpart D.

(c) The Department may require the operator to hydrostatically test for tightness, when stored regulated substances and/or their vapors have been detected in neighboring structures, sewers, wells, or other on-or-off property locations.

#### **SECTION 280.25. SECONDARY CONTAINMENT REQUIRED.**

Not later than December 22, 2018, all UST systems located within 100 feet of an existing water supply well, a coastal zone critical area, or state navigable waters must comply with one of the following requirements:

(a) Secondary containment requirements of Section 280.20(g); or

(b) Closure requirements under Subpart G of this Part, including applicable requirements for corrective action under Subpart F.

## **SUBPART C- General Operating Requirements**

### **SECTION 280.30. SPILL AND OVERFILL CONTROL.**

(a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

[Note: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with paragraph (a) of this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."]

(b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with Section 280.53.

### **SECTION 280.31. OPERATION AND MAINTENANCE OF CORROSION PROTECTION.**

All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(a) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(b) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) Frequency. All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the Department; and

(2) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

[Note: National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used to comply with paragraph (b)(2) of this section.]

(c) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.

(d) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with Section 280.34) to demonstrate compliance with the performance standards in this section. These records must provide the following:

(1) The results of the last three inspections required in paragraph (c) of this section; and

(2) The results of testing from the last two inspections required in paragraph (b) of this section.

### **SECTION 280.32. COMPATIBILITY.**

Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

[Note: Owners and operators storing alcohol blends may use the following codes to comply with the requirements of this section:

(A) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

(B) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."]

### **SECTION 280.33. REPAIRS ALLOWED.**

Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

(a) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

[Note: The following codes and standards may be used to comply with paragraph (a) of this section: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."]

(b) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

(c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications. Should the piping replacement or repair within a consecutive 12 month period constitute more than 25 percent of the piping by length, the entire piping run must be replaced with secondarily contained piping.

(d) Repaired tanks and piping must be tightness tested in accordance with Sections 280.43(c) and 280.44(b) within 30 days following the date of the completion of the repair except as provided in paragraphs (d)(1) through (3), of this section:

(1) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in Section 280.43(d) through (h); or

(3) Another test method is used that is determined by the Department to be no less protective of human health and the environment than those listed above.

(e) Within 6 months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with Section 280.31(b) and (c) to ensure that it is operating properly.

(f) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this section.

### **SECTION 280.34. REPORTING AND RECORDKEEPING.**

Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the Department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.

(a) Reporting. Owners and operators must submit the following information to the Department:

(1) Notification for all UST systems (Section 280.22), which includes certification of installation for new UST systems (Section 280.20(f));

(2) Reports of all releases including suspected releases (Section 280.50), spills and overfills (Section 280.53), and confirmed releases (Section 280.61);

(3) Corrective actions planned or taken including initial abatement measures (Section 280.62), initial site characterization (Section 280.63), free product removal (Section 280.64), investigation of soil and ground-water cleanup (Section 280.65), and corrective action plan (Section 280.66);

(4) A notification before permanent closure or change-in-service (Section 280.71);

(5) Documentation of all completed UST system upgrading (Section 280.21); and

(6) Results of site investigation on a form supplied by the Department or an approved substitute (Section 280.72).

(b) Recordkeeping. Owners and operators must maintain the following information:

(1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (Section 280.20(a)(4); Section 280.20(b)(3)).

(2) Documentation of operation of corrosion protection equipment (Section 280.31);

(3) Documentation of UST system repairs (Section 280.33(f));

(4) Recent compliance with release detection requirements (Section 280.45); and

(5) Results of the site investigation conducted at permanent closure (Section 280.74).

(6) Documentation of UST facility operator designation and training (Section 280.35).

(c) Availability and Maintenance of Records. Owners and operators must keep the records required either:

(1) At the UST site and immediately available for inspection by the Department; or

(2) At a readily available alternative site and be provided for inspection to the Department upon request.

In the case of permanent closure records required under Section 280.74, owners and operators are also provided with the additional alternative of mailing closure records to the Department if they cannot be kept at the site or an alternative site as indicated above.

### **SECTION 280.35. OPERATOR TRAINING REQUIRED**

(a) Not later than August 8, 2009, the Department shall develop an Operator Training Plan .

(b) The training plan shall:

(1) Be developed in cooperation with tank owners and operators; and

(2) Take into consideration training programs implemented by tank owners and tank operators;  
and

(3) Be appropriately communicated to tank owners and operators; and

(4) Provide options for obtaining training.

(5) Describe minimum curriculum standards and evaluation requirements for operator training.

(c) Not later than two years from the publication date of the Department's Operator Training Plan, operator training is required for all operators of underground storage tank systems that meet the definition of "UST system" in Section 280.12, except for those underground storage tank systems identified in Section 280.10(b) and 280.10(c) as excluded or deferred underground storage tank systems. Three categories of operators must be trained:

(1) Class A Operator - Persons having primary responsibility for on-site operation and maintenance of underground storage tank systems.

(2) Class B Operator - Persons having daily on-site responsibility for the operation and maintenance of underground storage tank systems.

(3) Class C Operator - Daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

(d) Class A and B Operators shall be trained in facility-specific operation and maintenance and/or emergency response actions within 30 days of being designated as an operator at the UST facility.

(e) Once each month, Class B Operators shall validate that:

- (1) Each assigned facility has accomplished the required release detection monitoring;
- (2) Each assigned facility has the required release and equipment monitoring records;
- (3) Required equipment and system testing has been accomplished;
- (4) Unusual operating conditions or release detection system indications have been reported and investigated;
- (5) Routine operations and maintenance activities have been accomplished;
- (6) Spill, overfill, and corrosion protection systems are in place and operational;
- (7) Class C operators have been designated and trained.

(f) Class B Operators shall physically visit each assigned facility quarterly.

(g) Class C Operators shall be trained in facility specific emergency response actions before they assume responsibility for the UST facility.

(h) Operator Identification. Each facility will need at least one individual trained to perform the duties in each operator category (A, B, and C). At small facilities, one individual may handle all three duties. However, in the operation and maintenance structure at an underground storage tank facility that is part of a large store chain, open 24-hours, a number of persons may be designated to perform duties and responsibilities of operator classes A, B, and C.

(1) Not later than three months after the publication date of the Operator Training Plan, tank owners shall notify the Department of the number of operators in Operator Class A and Operator Class B for each UST facility. Not later than thirty days after Class A and Class B Operators complete appropriate operator training, tank owners will notify the department of the name, training completion date and training provider for each operator.

(i) The Department shall establish a registry of Class A and Class B operators to include facility responsibility, training completion date, and training provider.

(ii) The Department shall verify that training is current for Class A and Class B Operators during inspections at UST facilities.

(2) Tank owners shall designate in writing the Class C Operators for each facility and keep a copy of that designation on file at the facility.

(i) Tank owners shall be responsible for training Class C Operators.

(ii) Tank owners shall document training for Class C Operators and maintain a copy of that documentation on file at the facility.

(iii) The Department shall verify such documentation during inspections.

(i) Persons having primary responsibility and daily on-site operation and maintenance responsibility of underground storage tank systems (Class A and/or Class B Operators) shall repeat relevant facility-specific training if the tank for which they have such responsibilities is determined to be out of compliance with the requirements of this regulation.

**SUBPART D Release Detection**

**SECTION 280.40. GENERAL REQUIREMENTS FOR ALL UST SYSTEMS.**

(a) Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(3) Meets the performance requirements in Sections 280.43 or 280.44, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990, except for methods permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for that method in Section 280.43(b), (c), and (d) or 280.44(a) and (b) with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) When a release detection method operated in accordance with the performance standards in Sections 280.43 and 280.44 indicates a release may have occurred, owners and operators must notify the Department in accordance with Subpart E.

Owners and operators of all UST systems must comply with the release detection requirements of this Subpart by December 22nd of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION					
	YEAR WHEN RELEASE DETECTION IS REQUIRED (BY DECEMBER 22 OF THE YEAR INDICATED)				
YEAR SYSTEM WAS INSTALLED	1989	1990	1991	1992	1993
BEFORE 1965 OR DATE UNKNOWN	RD	P			
1965-1969		P/RD			
1970-1974		P	RD		
1975-1979		P		RD	
1980-1988		P			RD
NEW TANKS (AFTER DECEMBER 22) IMMEDIATELY UPON INSTALLATION					

P = Must begin release detection for all pressurized piping in accordance with Sections 280.41(b) and 280.42(b)(4).

RD = Must begin release detection for tanks and suction piping in accordance with Sections 280.41(a), 280.41(b), and 280.42.

(d) Any existing UST system that cannot apply a method of release detection that complies with the requirements of this Subpart must complete the closure procedures in Subpart G by the date on which release detection is required for that UST system under paragraph (c) of this section.

## **SECTION 280.41. REQUIREMENTS FOR PETROLEUM UST SYSTEMS.**

Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

(a) Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in Section 280.43 (d)-(i) except that:

(1) UST systems that meet the performance standards in Sections 280.20 or 280.21, and the monthly inventory control requirements in Section 280.43(a) or (b) may use tank tightness testing (conducted in accordance with Section 280.43(c)) at least every 5 years until December 22, 2008, or until 10 years after the tank is installed or upgraded under Section 280.21(b), whichever is earlier;

(2) UST systems that do not meet the performance standards in Section 280.20 or 280.21 may use monthly inventory controls (conducted in accordance with Section 280.43(a) or (b) and annual tank tightness testing (conducted in accordance with Section 280.43(c)) until December 22, 1998 when the tank must be upgraded under Section 280.21 or permanently closed under Section 280.71; and

(3) Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with Section 280.43(b)).

(b) Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(1) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(i) Be equipped with an automatic line leak detector conducted in accordance with Section 280.44(a); and

(ii) Have an annual line tightness test conducted in accordance with Section 280.44(b) or have monthly monitoring conducted in accordance with Section 280.44(c).

(2) Suction piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years and in accordance with Section 280.44(b), or use a monthly monitoring method conducted in accordance with Section 280.44(c). No release detection is required for suction piping that is designed and constructed to meet the following standards:

(i) The below-grade piping operates at less than atmospheric pressure;

(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(iii) Only one check valve is included in each suction line;

(iv) The check valve is located directly below and as close as practical to the suction pump;  
and

(v) A method is provided that allows compliance with paragraphs (b)(2)(ii)-(iv) of this section to be readily determined.

## **SECTION 280.42. REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS.**

Owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements:

(a) Release detection at existing UST systems must meet the requirements for petroleum UST systems in Section 280.41. By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in paragraph (b) of this section.

(b) Release detection at new hazardous substance UST systems must meet the following requirements:

(1) Secondary containment systems must be designed, constructed and installed to:

(i) Contain regulated substances released from the tank system until they are detected and removed;

(ii) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(iii) Be checked for evidence of a release at least every 30 days.

[Note: The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these requirements.]

(2) Double-walled tanks must be designed, constructed, and installed to:

(i) Contain a release from any portion of the inner tank within the outer wall; and

(ii) Detect the failure of the inner wall.

(3) External liners (including vaults) must be designed, constructed, and installed to:

(i) Contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Prevent the interference of precipitation or ground-water intrusion with the ability to contain or detect a release of regulated substances; and

(iii) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

(4) Underground piping must be equipped with secondary containment that satisfies the requirements of paragraph (b)(1) of this section (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with Section 280.44(a).

(5) Other methods of release detection may be used if owners and operators:

(i) Demonstrate to the Department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in Sections 280.43(b)-(h) can detect a release of petroleum;

(ii) Provide information to the Department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

(iii) Obtain approval from the Department to use the alternate release detection method before the installation and operation of the new UST system.

#### **SECTION 280.43. METHODS OF RELEASE DETECTION FOR TANKS.**

Each method of release detection for tanks used to meet the requirements of Section 280.41 must be conducted in accordance with the following:

(a) Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(1) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(2) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(3) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(4) Deliveries and measurements are made through a drop tube that extends to within one foot of the tank bottom;

(5) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and

(6) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

[Note: Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of this paragraph.]

(b) Manual tank gauging. Manual tank gauging must meet the following requirements:

(1) Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

(2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(3) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(4) A leak is suspected and subject to the requirements of Subpart E if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity	Weekly Standard (one test)	Monthly Standard
550 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons
1,001-2,000 gallons	26 gallons	13 gallons

(5) Only tanks of 550 gallons or less nominal capacity may use this as the sole method of release detection. Tanks of 551 to 2,000 gallons may use the method in place of manual inventory control in Section 280.43(a). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subpart.

(c) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(d) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(1) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and

(2) Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of Section 280.43(a).

(e) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(1) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(2) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(3) The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(4) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(5) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (e)(1)-(4) of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product;

(7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering;  
and

(8) Monitoring wells shall be sealed from the ground surface to the top of the filter pack.

(f) Ground-water monitoring. Testing or monitoring for liquids on the ground water must meet the following requirements:

(1) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(2) Ground water is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(3) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground-water conditions;

(4) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(5) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(6) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;

(7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (f)(1)-(5) of this section and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

(8) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(g) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(1) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;

(i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10<sup>-6</sup> cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(ii) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(iv) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(3) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(h) Statistical inventory reconciliation. Statistical inventory reconciliation (SIR) must be conducted monthly and meet the following requirements:

(1) The method must be third party certified to satisfy the requirements of Section 280.43(i)(1);

(2) The methodology must specifically identify the results for each tank as "pass, fail, or inconclusive". The results report must also identify the threshold, minimum detection level, and measured leak rate for each tank evaluated;

(3) SIR results must be reported in a format designated by the Department; and

(4) A leak is suspected and subject to the requirements of Subpart E for any results other than "pass."

(i) Other methods. Any other type of release detection method, or combination of methods, can be used if:

(1) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(2) The Department may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (c)-(i) of this section. In comparing methods, the Department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the Department on its use to ensure the protection of human health and the environment.

#### **SECTION 280.44. METHODS OF RELEASE DETECTION FOR PIPING.**

Each method of release detection for piping used to meet the requirements of Section 280.41 must be conducted in accordance with the following:

(a) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual

alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.

(b) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

(c) Applicable tank methods. Any of the methods in Section 280.43(e)-(i) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

#### **SECTION 280.45. RELEASE DETECTION RECORDKEEPING.**

All UST system owners and operators must maintain records in accordance with Section 280.34 demonstrating compliance with all applicable requirements of this Subpart. These records must include the following:

(a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for 5 years, or for another reasonable period of time determined by the Department, from the date of installation;

(b) The results of any sampling, testing, or monitoring must be maintained as follows:

(1) For tank systems storing regulated substances, records must be maintained for at least 1 year, or for another reasonable period of time determined by the Department, except that the results of tank tightness testing conducted in accordance with Section 280.43(c) must be retained until the next test is conducted; or

(2) For tank systems temporarily closed, records for the most recent 12 months of operation must be maintained as follows:

(i) For one year after taking the system out of temporary closure status and returning regulated substances to the system; or

(ii) As required by Section 280.45(b)(3) for systems subsequently permanently closed.

(3) For tank systems permanently closed, records for the most recent 12 months of operation must be maintained with the results of the site assessment required in Section 280.72 and maintained in accordance with the requirements of Section 280.74.

(c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the Department. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for 5 years from the date of installation.

## **SUBPART E Release Reporting, Investigation, and Confirmation**

### **SECTION 280.50. REPORTING OF SUSPECTED RELEASES.**

Owners and operators of UST systems must report to the Department within 72 hours and follow the procedures in Section 280.52 for any of the following conditions:

(a) The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).

(b) Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and

(c) Monitoring results from a release detection method required under Sections 280.41 and 280.42 that indicate a release may have occurred unless:

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(2) In the case of inventory control, a second month of data does not confirm the initial result.

### **SECTION 280.51. INVESTIGATION DUE TO OFF-SITE IMPACTS.**

When required by the Department, owners and operators of UST systems must follow the procedures in Section 280.52 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the Department or brought to its attention by another party.

### **SECTION 280.52. RELEASE INVESTIGATION AND CONFIRMATION STEPS.**

Unless corrective action is initiated in accordance with Subpart F, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under Section 280.50 within 7 days, or another reasonable time period specified by the Department, using either the following steps or another procedure approved by the Department:

(a) System test. Owners and operators must conduct tests (according to the requirements for tightness testing in Sections 280.43(c) and 280.44(b)) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.

(1) Owners and operators must repair, replace or upgrade the UST system, and begin corrective action in accordance with Subpart F if the test results for the system, tank, or delivery piping indicate that a leak exists.

(2) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(3) Owners and operators must conduct a site check as described in paragraph (b) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(b) Site check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.

(1) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with Subpart F;

(2) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

### **SECTION 280.53. REPORTING AND CLEANUP OF SPILLS AND OVERFILLS.**

(a) Owners and operators of UST systems must contain and immediately clean up a spill or overflow and report to the Department within 72 hours and begin corrective action in accordance with Subpart F in the following cases:

(1) Spill or overflow of petroleum that results in a release to the environment that exceeds 25 gallons or another reasonable amount specified by the Department, or that causes a sheen on nearby surface water; and

(2) Spill or overflow of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR 302).

(b) Owners and operators of UST systems must contain and immediately clean up a spill or overflow of petroleum that is less than 25 gallons or another reasonable amount specified by the Department, and a spill or overflow of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 72 hours owners and operators must immediately notify the Department.

[Note: A release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 72 hours) to the National Response Center under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (40 CFR 302.6) and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986 (40 CFR 355.40).]

## **SUBPART F Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances**

### **SECTION 280.60. GENERAL.**

Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subpart except for USTs excluded under Section 280.10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under Section 3004(u) of the Resource Conservation and Recovery Act, as amended.

### **SECTION 280.61. INITIAL RESPONSE.**

Upon confirmation of a release in accordance with Section 280.52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 72 hours of a release:

- (a) Report the release to the Department (e.g., by telephone or electronic mail);
- (b) Take immediate action to prevent any further release of the regulated substance into the environment; and
- (c) Identify and mitigate fire, explosion, and vapor hazards.

### **SECTION 280.62. INITIAL ABATEMENT MEASURES AND SITE CHECK.**

(a) Unless directed to do otherwise by the Department, owners and operators must perform the following abatement measures:

- (1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
- (2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water;
- (3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
- (4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements;
- (5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by Section 280.52(b) or the closure site assessment of Section 280.72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to ground water and other factors as appropriate for identifying the presence and source of the release; and

(6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with Section 280.64.

(b) Within 20 days after release confirmation, or within another reasonable period of time determined by the Department, owners and operators must submit a report to the Department summarizing the initial abatement steps taken under paragraph (a) of this section and any resulting information or data.

### **SECTION 280.63. INITIAL SITE CHARACTERIZATION.**

(a) Unless directed to do otherwise by the Department, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in Sections 280.60 and 280.61. This information must include, but is not necessarily limited to the following:

(1) Data on the nature and estimated quantity of release;

(2) Data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

(3) Results of the site check required under Section 280.62(a)(5); and

(4) Results of the free product investigations required under Section 280.62(a)(6), to be used by owners and operators to determine whether free product must be recovered under Section 280.64.

(b) Within 45 days of release confirmation or another reasonable period of time determined by the Department, owners and operators must submit the information collected in compliance with paragraph (a) of this section to the Department in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the Department.

### **SECTION 280.64. FREE PRODUCT REMOVAL.**

At sites where investigations under Section 280.62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the Department while continuing, as necessary, any actions initiated under Sections 280.61 through 280.63, or preparing for actions required under Sections 280.65 through 280.66. In meeting the requirements of this section, owners and operators must:

(a) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state and federal regulations;

(b) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

(c) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

(d) Unless directed to do otherwise by the Department, prepare and submit to the Department, within 45 days after confirming a release, a free product removal report that provides at least the following information:

- (1) The name of the person(s) responsible for implementing the free product removal measures;
- (2) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
- (3) The type of free product recovery system used;
- (4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
- (5) The type of treatment applied to, and the effluent quality expected from, any discharge;
- (6) The steps that have been or are being taken to obtain necessary permits for any discharge; and
- (7) The disposition of the recovered free product.

#### **SECTION 280.65. INVESTIGATIONS FOR SOIL AND GROUND-WATER CLEANUP.**

(a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the ground water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

- (1) There is evidence that ground-water wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);
- (2) Free product is found to need recovery in compliance with Section 280.64;
- (3) There is evidence that contaminated soils may be in contact with ground water (e.g., as found during conduct of the initial response measures or investigations required under Sections 280.60 through 280.64); and
- (4) The Department requests an investigation, based on the potential effects of contaminated soil or ground water on nearby surface water and ground-water resources.

(b) Owners and operators must submit the information collected under paragraph (a) of this section as soon as practicable or in accordance with a schedule established by the Department.

#### **SECTION 280.66. CORRECTIVE ACTION PLAN.**

(a) At any point after reviewing the information submitted in compliance with Sections 280.61 through 280.63, the Department may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and ground water. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the Department. Alternatively, owners and operators may, after fulfilling the requirements of Sections 280.61 through 280.63, choose to submit a corrective action plan for responding to contaminated soil and ground water. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the Department, and must modify their plan as necessary to meet this standard.

(b) The Department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the Department should consider the following factors as appropriate:

- (1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
- (2) The hydrogeologic characteristics of the facility and the surrounding area;
- (3) The proximity, quality, and current and future uses of nearby surface water and ground water;
- (4) The potential effects of residual contamination on nearby surface water and ground water;
- (5) An exposure assessment; and
- (6) Any information assembled in compliance with this subpart.

(c) Upon approval of the corrective action plan or as directed by the Department, owners and operators must implement the plan, including modifications to the plan made by the Department. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the Department.

(d) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided that they:

- (1) Notify the Department of their intention to begin cleanup;
- (2) Comply with any conditions imposed by the Department, including halting cleanup or mitigating adverse consequences from cleanup activities; and
- (3) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the Department for approval.

#### **SECTION 280.67. PUBLIC PARTICIPATION.**

(a) For each confirmed release that requires a corrective action plan, the Department must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.

(b) The Department must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

(c) Before approving a corrective action plan, the Department may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

(d) The Department must give public notice that complies with paragraph (a) of this section if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the Department.

## **SUBPART G Out-of-Service UST Systems and Closure**

### **SECTION 280.70. TEMPORARY CLOSURE.**

(a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with Section 280.31, and any release detection in accordance with Subpart D. Subparts E and F must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(b) When an UST system is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements:

- (1) Leave vent lines open and functioning; and
- (2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) When an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either performance standards in Section 280.20 for new UST systems or the upgrading requirements in Section 280.21, except that the spill and overflow equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with Sections 280.71-280.74, unless the Department provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with Section 280.72 before such an extension can be applied for.

(d) When an UST system is temporarily closed, owners and operators must maintain records in accordance with Section 280.45(b)(2).

### **SECTION 280.71. PERMANENT CLOSURE AND CHANGES—IN--SERVICE.**

(a) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (b) and (c) of this section, or within another reasonable time period determined by the Department, owners and operators must notify the Department of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action. At least 30 days before replacing previously installed piping or previously installed dispensers, owners and operators must notify the Department of their intent. The required assessment of the excavation zone under Section 280.72 must be performed after notifying the Department but before completion of the permanent closure or a change-in-service.

(b) To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material.

(c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with Section 280.72.

[Note: The following cleaning and closure procedures may be used to comply with this section:

(A) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";

(B) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

(C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and

(D) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard. Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.]

#### **SECTION 280.72. ASSESSING THE SITE AT CLOSURE OR CHANGE—IN--SERVICE AND REPORTING REQUIREMENTS.**

(a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in Section 280.43(e) and (f) is operating in accordance with the requirements in Section 280.43 at the time of closure or change-in-service, and indicates no release has occurred.

(b) If contaminated soils, contaminated ground water, or free product as a liquid or vapor is discovered under paragraph (a) of this section, or by any other manner, owners and operators must begin corrective action in accordance with Subpart F.

(c) Owners and operators must submit the information collected in compliance with paragraph (a) of this section, on a form supplied by the Department or an approved substitute, to the Department not later than 60 days after the tank has been either removed from the ground or filled with an inert solid material.

#### **SECTION 280.73. APPLICABILITY TO PREVIOUSLY CLOSED UST SYSTEMS.**

When directed by the Department, the owner and operator of an UST system permanently closed before December 22, 1988, must access the excavation zone and close the UST system in accordance with this Subpart if releases from the UST may, in the judgment of the Department, pose a current or potential threat to human health and the environment.

#### **SECTION 280.74. CLOSURE RECORDS.**

Owners and operators must maintain records in accordance with Section 280.34 that are capable of demonstrating compliance with closure requirements under this Subpart. The results of the excavation zone assessment required in Section 280.72 must be maintained for at least 3 years after completion of permanent closure or change-in-service in one of the following ways:

(a) By the owners and operators who took the UST system out of service;

(b) By the current owners and operators of the UST system site; or

(c) By mailing these records to the Department if they cannot be maintained at the closed facility.

## **SUBPART H Financial Responsibility**

### **SECTION 280.90. APPLICABILITY.**

(a) This subpart applies to owners and operators of all petroleum underground storage tank (UST) systems in South Carolina except as otherwise provided in this section.

(b) Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the effective date of this subpart.

(c) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subpart.

(d) The requirements of this subpart do not apply to owners and operators of any UST system described in section 280.10(b) or (c).

(e) If the owner and operator of a petroleum UST are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in section 280.91.

### **SECTION 280.91. COMPLIANCE DATES.**

[Note: Pursuant to 40 CFR Part 280, Vol. 58, No. 31 of February 18, 1993, the Federal Regulation entitled "Underground Storage Tanks Containing Petroleum--Financial Responsibility Requirements; Final Rule" became effective one year after its date of publication. The federal regulation thus became effective on February 18, 1994.]

As enacted by Title 44, Chapter 2, of the 1976 South Carolina Code of Laws, the State Underground Petroleum Environmental Response Bank Act (hereafter referred to as the SUPERB Act), all petroleum UST owners or operators are required to comply with the requirements of this subpart. Compliance with this subpart is required on September 22, 1995.

### **SECTION 280.92. DEFINITION OF TERMS.**

When used in this subpart, the following terms shall have the meanings given below:

(a) "Accidental release" means any sudden or nonsudden release of petroleum from an UST that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the UST owner or operator.

(b) "Bodily injury" shall have the meaning given to this term by applicable South Carolina law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(c) "Chief Financial Officer", in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

(d) "Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.

(e) "Department" refers to the South Carolina Department of Health and Environmental Control.

(f) "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared: (1) a 10-K report submitted to the SEC; (2) an annual report of tangible net worth submitted to Dun and Bradstreet; or (3) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

(g) "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought, (1) by the Environmental Protection Agency (EPA) or the state of South Carolina to require corrective action or to recover the costs of corrective action; (2) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (3) by any person to enforce the terms of a financial assurance mechanism.

(h) Local government shall have the meaning given this term by applicable state law and includes Indian tribes. The term is generally intended to include: (1) Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and (2) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

(i) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an UST.

[Note: This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."]

(j) "Owner or operator," when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

(k) "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(l) "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(m) "Property damage" shall have the meaning given this term by applicable South Carolina law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

(n) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in sections 280.95 through 280.103, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

(o) "SCUSTCR" refers to the South Carolina Underground Storage Tank Control Regulations, promulgated pursuant to section 44-2-50 of the 1976 South Carolina Code of Laws and enacted in March, 1990.

(p) "Substantial business relationship" means the extent of a business relationship necessary under applicable South Carolina law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(q) "Substantial compliance" as stated in section 44-2-20(14) of the 1976 Code of Laws, as amended, means that a UST owner or operator has demonstrated a good faith effort to comply with regulations necessary and essential in preventing releases, in facilitating their early detection, and in mitigating their impact on public health and the environment.

(r) "Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable South Carolina law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping constituencies, common ground-water aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(s) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

#### **SECTION 280.93. AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY.**

[Note: The SUPERB Account and the SUPERB Financial Responsibility Fund, described in section 280.101, may be used to meet the South Carolina financial responsibility requirements for corrective action and third party liability, respectively, when used in conjunction with the owner or operator responsibilities given in section 280.101.]

(a) Owners or operators of petroleum USTs must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum USTs that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1,000,000.

(2) For all other owners or operators of petroleum USTs; \$500,000.

(b) Owners or operators of petroleum USTs must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the following annual aggregate amounts:

(1) For owners or operators of 1 to 100 petroleum USTs, \$1,000,000; and

(2) For owners or operators of 101 or more petroleum USTs, \$2,000,000.

(c) For the purposes of paragraphs (b) and (f) of this section, only, "a petroleum UST" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in paragraph (e) of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(1) taking corrective action;

(2) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(3) compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in paragraphs (a) and (b) of this section.

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum USTs, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum USTs are acquired or installed. If the number of petroleum USTs for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

#### **SECTION 280.94. ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS.**

(a) Subject to the limitations of paragraphs (b) and (c) of this section:

(1) An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in sections 280.95 through 280.103 to demonstrate financial responsibility under this subpart for one or more USTs, and

(2) A local government owner or operator may use any one or combination of the mechanisms listed in sections 280.104 through 280.107 to demonstrate financial responsibility under this subpart for one or more USTs.

(b) An owner or operator may use a guarantee under section 280.96 or surety bond under section 280.98 to establish financial responsibility if such mechanism is approved by the South Carolina Attorney General as a legally valid and enforceable obligation in South Carolina.

(c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

#### **SECTION 280.95. FINANCIAL TEST OF SELF--INSURANCE.**

(a) An owner or operator, and/or guarantor, may satisfy the requirements of section 280.93 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of paragraph (b) or (c) of this section based on year-end financial statements for the latest completed fiscal year.

(b)(1) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(i) The total of the applicable aggregate amount required by section 280.93, based on the number of USTs for which a financial test is used to demonstrate financial responsibility to EPA under this section or to the Department;

(ii) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Parts 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 and to the Department (subsequent to authorization by EPA under 40 CFR Part 271); and

(iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Part 144.63 and to the Department (subsequent to authorization by EPA under 40 CFR Part 145).

(2) The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10 million.

(3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in paragraph (d) of this section.

(4) The owner or operator, and/or guarantor, must either:

(i) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(ii) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(c)(1) The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in sections 280.93(b)(1) and (b)(2) for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in paragraph (d) of this section.

(5) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(i) He has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under paragraph (b) or (c) of this section, the chief financial officer of the owner or operator, and/or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

#### Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following South Carolina facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to R.61-92.280.22.]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Part 271 and 145:

Amount

EPA Regulation:

Closure (sections 264.143 & 265.143).....	\$	
Post-Closure Care (sections 264.145 & 265.145).....	\$	
Liability Coverage (sections 264.147 and 265.147).....		\$
Corrective Action (section 264.101(b)).....		\$
Plugging and Abandonment (section 144.63) .....		\$

Amount

South Carolina (Subsequent to authorization):

Closure .....	\$	
Post-Closure Care .....	\$	
Liability Coverage.....	\$	
Corrective Action .....	\$	
Plugging and Abandonment .....		\$
TOTAL.....	\$	

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of paragraph (b) of section 280.95 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of paragraph (c) of section 280.95 are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee..... \$
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee..... \$
3. Sum of lines 1 and 2 ..... \$
4. Total tangible assets..... \$
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]..... \$
6. Tangible net worth [subtract line 5 from line 4]..... \$

- |  | Yes | No |
|--|-----|----|
| 7. Is line 6 at least \$10 million?.....   |     |    |
| 8. Is line 6 at least 10 times line 3?.....  |     |    |
| 9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?.....   | —   | —  |
| 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration?.....   |     |    |
| 11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? .....   | —   | —  |
| 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.]..... |     |    |

ALTERNATIVE II

- |  |    |
|--|----|
| 1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee.....  | \$ |
| 2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by financial test, and/or guarantee.....   | \$ |
| 3. Sum of lines 1 and 2.....   | \$ |
| 4. Total tangible assets .....   | \$ |
| 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] ..... | \$ |
| 6. Tangible net worth [subtract line 5 from line 4].....   | \$ |
| 7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] .....  | \$ |

- |     |   | Yes | No |
|-----|---|-----|----|
| 8.  | Is line 6 at least \$10 million?.....   | —   |    |
| 9.  | Is line 6 at least 6 times line 3? .....  | —   |    |
| 10. | Are at least 90 percent of assets located in the U.S.?<br>[If "No," complete line 11.]..... | —   |    |
| 11. | Is line 7 at least 6 times line 3?.....   | —   |    |
|     | [Fill in either lines 12-15 or lines 16-18:]  |     |    |
| 12. | Current assets .....  | \$  |    |
| 13. | Current liabilities. ....   | \$  |    |
| 14. | Net working capital [subtract line 13 from line 12]..                                       | \$  |    |

- |     |  | Yes   | No |
|-----|--|-------|----|
| 15. | Is line 14 at least 6 times line 3? .....  | —     |    |
| 16. | Current bond rating of most recent bond issue .....  |       |    |
| 17. | Name of rating service.....  | _____ |    |
| 18. | Date of maturity of bond.....  |       |    |
| 19. | Have financial statements for the latest fiscal<br>year been filed with the SEC, the Energy<br>Information Administration, or the Rural<br>Electrification Administration? ..... | —     |    |

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in R.61-92.280.95(d) as such regulations were constituted on the date shown immediately below.

[Signature]  
[Name]  
[Title]  
[Date]

(e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(f) The Department may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the Department finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of section 280.95(b) or (c) and (d), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(g) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Department that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Department of such failure within 10 days.

#### **SECTION 280.96. GUARANTEE.**

(a) An owner or operator may satisfy the requirements of section 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(1) A firm that (i) possesses a controlling interest in the owner or operator; (ii) possesses a controlling interest in a firm described under (a)(1)(i) of this section; or, (iii) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or,

(2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of section 280.95 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in section 280.95(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the Department notifies the guarantor that he no longer meets the requirements of the financial test of section 280.95(b) or (c) and (d), the guarantor must notify the owner or operator within 10 days of receiving such notification from the Department. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternate coverage as specified in section 280.110(c).

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### **GUARANTEE**

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the Department of Health and Environmental Control (Department) and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of R.61-92.280.95(b) or (c) and (d) and agrees to comply with the requirements for guarantors as specified in section 280.96(b).

(2) [Owner or operator] owns or operates the following underground storage tank(s) in South Carolina covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280.22 and the name and address of the facility.] This guarantee satisfies R.61-92.280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Department and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of R.61-92.280.108, in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with R.61-92.280, Subpart F, the guarantor upon written instructions from the Department shall fund a standby trust in accordance with the provisions of R.61-92.280.108, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Department shall fund a standby trust in accordance with the provisions of R.61-92.280.108 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of R.61-92.280.95(b) or (c) and (d), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to R.61-92.280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of R.61-92.280, Subpart H for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in R.61-92.280.96(c) as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: \_\_\_\_\_

(d) An owner or operator who uses a guarantee to satisfy the requirements of section 280.93 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Department under section 280.108. This standby trust fund must meet the requirements specified in section 280.103.

**SECTION 280.97. INSURANCE AND RISK RETENTION GROUP COVERAGE.**

(a) An owner or operator may satisfy the requirements of section 280.93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (b)(1) or evidenced by a certificate of insurance worded as specified in paragraph (b)(2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) ENDORSEMENT

Name: \_\_\_\_\_ [name of each covered location]

Address: \_\_\_\_\_ [address of each covered location]

Policy Number: \_\_\_\_\_  
Period of Coverage: \_\_\_\_\_ [current policy period]

Name of [Insurer or Risk Retention Group]:  
\_\_\_\_\_

Address of [Insurer or Risk Retention Group]:  
\_\_\_\_\_

Name of Insured: \_\_\_\_\_

Address of Insured: \_\_\_\_\_

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280.22, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].



Address of Insured: \_\_\_\_\_

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280.22, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in R.61-92.280.95 through 280.102.

c. Whenever requested by the Department, the ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or other termination of the policy.]



amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with R.61-92.280, Subpart F and the Department's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in R.61-92.280, Subpart H, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Department that the principal has failed to ["take corrective action, in accordance with R.61-92.280, Subpart F and the Department's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with R.61-92.280 and the Department's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Department under R.61-92 280.108.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Department has determined or suspects that a release has occurred, the Surety(ies)

shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Department under R.61-92.280.108.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in R.61-92.280.98(b) as such regulations were constituted on the date this bond was executed.

**PRINCIPAL**

[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate seal]

**CORPORATE SURETY(IES)**

[Name and address]  
State of Incorporation: \_\_\_\_\_  
Liability limit: \$ \_\_\_\_\_  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of section 280.93 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Department under section 280.108. This standby trust fund must meet the requirements specified in section 280.103.

**SECTION 280.99. LETTER OF CREDIT.**

(a) An owner or operator may satisfy the requirements of section 280.93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in South Carolina and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**IRREVOCABLE STANDBY LETTER OF CREDIT**

[Name and address of issuing institution]

Department of Health and Environmental Control, Underground Storage Tank Program, 2600 Bull Street, Columbia, SC, 29201

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. \_\_\_\_, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended, and the State Underground Petroleum Environmental Response Bank Act, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280.22, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in R.61-92.280.99(b) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of section 280.93 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department under section 280.108. This standby trust fund must meet the requirements specified in section 280.103.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

#### **SECTION 280.100. USE OF STATE-REQUIRED MECHANISM.**

(Reserved)

**SECTION 280.101. STATE UNDERGROUND PETROLEUM ENVIRONMENTAL RESPONSE BANK (SUPERB) OR OTHER STATE ASSURANCE.**

(a) When used in conjunction with the deductible amount[s] referenced in (c) below, the SUPERB Account and the SUPERB Financial Responsibility Fund may be used to satisfy the financial responsibility requirements of section 280.93 for corrective action and third party bodily injury or property damage, respectively, for USTs located in South Carolina.

(b) To be qualified for coverage by these funds, the UST owner or operator shall meet the following requirements which have been extracted from Title 44, Chapter 2 of the 1976 Code of Laws, the State Underground Petroleum Environmental Response Bank Act, as amended, and the regulations promulgated thereafter:

(1) The UST for which coverage is requested is in substantial compliance with SCUSTCR.

(2) All UST registration and annual fees have been paid.

(3) Department representatives have not been denied site access during reasonable hours to perform any requested activities authorized under the SUPERB Act.

(4) The owner or operator is not cited in any enforcement action by the Department pertaining to the USTs for which coverage is requested.

(c) The deductible[s] in force at the time the site was reported may be met by using the mechanisms listed in sections 280.95 through 280.100 and sections 280.102 through 280.107 or:

(1) For sites where the UST systems do not yet meet the federally mandated 1998 performance standards for corrosion protection and spill and overfill protection, by submitting a financial statement signed by a Certified Public Accountant or the chief financial officer of the company showing a tangible net worth of at least four times the deductible amount.

(2) For sites where the UST systems meet or have been upgraded to meet the federally mandated 1998 performance standards for corrosion protection and spill and overfill protection, by submitting a financial statement signed by a Certified Public Accountant or the chief financial officer of the company showing a tangible net worth of at least two times the deductible amount.

(d) The owner or operator must maintain a completed certificate, provided by the Department in section 280.111(b)(11), on file at the operating facility as proof of financial responsibility. [See sections 280.110 and 280.111 for additional recordkeeping requirements.]

(e) Subsequent to the abolishment of the environmental impact fee as authorized in section 44-2-90 of the SUPERB Act, the coverage amounts afforded by these funds as authorized by this section will no longer be applicable. At that time owners or operators must demonstrate the full state financial responsibility requirement using approved mechanisms detailed in sections 280.95 through 280.100 and sections 280.102 through 280.107.

**SECTION 280.102. TRUST FUND.**

(a) An owner or operator may satisfy the requirements of section 280.93 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act

as a trustee and whose trust operations are regulated and examined by a federal agency or a South Carolina agency.

(b) The wording of the trust agreement must be identical to the wording specified in section 280.103(b)(1), and must be accompanied by a formal certification of acknowledgment as specified in section 280.103(b)(2).

(c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the Department for release of the excess.

(e) If other financial assurance as specified in this subpart is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Department for release of the excess.

(f) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraphs (d) or (e) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

#### **SECTION 280.103. STANDBY TRUST FUND.**

(a) An owner or operator using any one of the mechanisms authorized by sections 280.96, 280.98, or 280.99 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or a South Carolina agency.

(b)(1) The standby trust agreement must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

##### **TRUST AGREEMENT**

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of SOUTH CAROLINA" or "a national bank"], the "Trustee."

[Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, and the Department of Health and Environmental Control, an agency of the state of South Carolina, have established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank (This paragraph is only applicable to the standby trust agreement.);]

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);]

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

[Section 2. Identification of the Financial Assurance Mechanism. This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Health and Environmental Control (Department). The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Department's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Department.

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"]. The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

The Trustee shall reimburse the Grantor, or other persons as specified by the Department, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. ag-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in section 9.

Section 13. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully

protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Department if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Department if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the state of South Carolina, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in R.61-92.280.103(b)(1) as such regulations were constituted on the date written above.

[Signature of Grantor]  
[Name of the Grantor]  
[Title]

Attest:

[Signature of Trustee]  
[Name of the Trustee]  
[Title]  
[Seal]

Attest:

[Signature of Witness]  
[Name of Witness]  
[Title]  
[Seal]

(2) The standby trust agreement must be accompanied by a formal certification of acknowledgment similar to the following.

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]  
[Name of Notary Public]

(c) The Department will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Department determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

#### **SECTION 280.104. LOCAL GOVERNMENT BOND RATING TEST.**

(a) A general purpose local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of section 280.93 by having a currently outstanding issue or issues of general obligation bonds of \$1 million or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(b) A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of section 280.93 by having a currently outstanding issue or issues of revenue bonds of \$1 million or more, excluding refunded issues and by also having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(c) The local government owner or operator and/or guarantor must maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue date:

Maturity date:

Outstanding amount:

Bond rating:

Rating agency:

(Moody's or Standard & Poor's)

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in R.61-92.280.104(d) as such regulations were constituted on the date shown immediately below.

[Date] \_\_\_\_\_

[Signature] \_\_\_\_\_

[Name] \_\_\_\_\_

[Title] \_\_\_\_\_

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer or operator and/or guarantor other than a general purpose government must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue date:  
Maturity date:  
Outstanding amount:  
Bond rating:  
Rating agency:

(Moody's or Standard & Poor's)

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in R.61-92.280.104(e) as such regulations were constituted on the date shown immediately below.

[Date] \_\_\_\_\_  
[Signature] \_\_\_\_\_  
[Name] \_\_\_\_\_  
[Title] \_\_\_\_\_

(f) The Department may require reports of financial condition at any time from the local government owner or operator, and/or local government guarantor. If the Department finds, on the basis of such reports or other information, that the local government owner or operator, and/or guarantor, no longer meets the local government bond rating test requirements of section 280.104, the local government owner or operator must obtain alternative coverage within 30 days after notification of such a finding.

(g) If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator must obtain alternative coverage within 150 days of the change in status.

## **SECTION 280.105. LOCAL GOVERNMENT FINANCIAL TEST.**

(a) A local government owner or operator may satisfy the requirements of section 280.93 by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator must meet the criteria of paragraphs (b)(2) and (b)(3) of this section based on year-end financial statements for the latest completed fiscal year.

(b)(1) The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

(i) Total Revenues: Consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(ii) Total Expenditures: Consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

(iii) Local Revenues: Consists of total revenues (as defined in paragraph (b)(1)(i) of this section) minus the sum of all transfers from other governmental entities, including all monies received from Federal, State, or local government sources.

(iv) Debt Service: Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants. Excludes payments on non-interest-bearing short-term obligation, interfund obligation, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(v) Total Funds: Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes Federal securities, Federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(vi) Population: consists of the number of people in the area served by the local government.

(2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(3) The local government owner or operator must have a letter signed by the chief financial officer worded as specified in paragraph (c) of this section.

(c) To demonstrate that it meets the financial test under paragraph (b) of this section, the chief financial officer of the local government owner or operator, must sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

#### LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [an] underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to R.61-92.280.22.

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, it rated, have Moody's rating of Aaa, Aa, A, or Baa or a Standard & Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A, or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

#### WORKSHEET FOR MUNICIPAL FINANCIAL TEST

##### Part I: Basic Information

##### 1. Total Revenues

a. Revenues (dollars) \_\_\_\_\_

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars)

c. Total Revenues (dollars)

##### 2. Total Expenditures

a. Expenditures (dollars) \_\_\_\_\_

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

- b. Subtract interfund transfers (dollars) \_\_\_\_\_
- c. Total Expenditures (dollars) \_\_\_\_\_

3. Local Revenues

- a. Total Revenues (from 1c) (dollars) \_\_\_\_\_   b.
- Subtract total intergovernmental transfers (dollars) \_\_\_\_\_
- c. Local Revenues (dollars) \_\_\_\_\_

4. Debt Service

- a. Interest and fiscal charges (dollars) \_\_\_\_\_
- b. Add debt retirement (dollars) \_\_\_\_\_
- c. Total Debt Service (dollars) \_\_\_\_\_

5. Total Funds (dollars) \_\_\_\_\_

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

6. Population (Persons)

Part II: Application of Test

7. Total Revenues to Population

- a. Total Revenues (from 1c) \_\_\_\_\_
- b. Population (from 6) \_\_\_\_\_
- c. Divide 7a by 7b \_\_\_\_\_
- d. Subtract 417 \_\_\_\_\_
- e. Divide by 5,212 \_\_\_\_\_
- f. Multiply by 4.095 \_\_\_\_\_

8. Total Expenses to Population

- a. Total Expenses (from 2c) \_\_\_\_\_
- b. Population (from 6) \_\_\_\_\_
- c. Divide 8a by 8b \_\_\_\_\_
- d. Subtract 524 \_\_\_\_\_
- e. Divide by 5,401 \_\_\_\_\_
- f. Multiply by 4.095 \_\_\_\_\_

9. Local Revenues to Total Revenues

- a. Local Revenues (from 3c) \_\_\_\_\_
- b. Total Revenues (from 1c) \_\_\_\_\_
- c. Divide 9a by 9b \_\_\_\_\_
- d. Subtract .695 \_\_\_\_\_
- e. Divide by .205 \_\_\_\_\_
- f. Multiply by 2.840 \_\_\_\_\_

10. Debt Service to Population

- a. Debt Service (from 4d) \_\_\_\_\_
- b. Population (from 6) \_\_\_\_\_
- c. Divide 10a by 10b \_\_\_\_\_

- d. Subtract 51 \_\_\_\_\_
- e. Divide by 1,038 \_\_\_\_\_
- f. Multiply by -1.866 \_\_\_\_\_

11. Debt Service to Total Revenues

- a. Debt Service (from 4d) \_\_\_\_\_
- b. Total Revenues (from 1c) \_\_\_\_\_
- c. Divide 11a by 11b \_\_\_\_\_
- d. Subtract .068 \_\_\_\_\_
- e. Divide by .259 \_\_\_\_\_
- f. Multiply by -3.533 \_\_\_\_\_

12. Total Revenues to Total Expenses

- a. Total Revenues (from 1c) \_\_\_\_\_
- b. Total Expenses (from 2c) \_\_\_\_\_
- c. Divide 12a by 12b \_\_\_\_\_
- d. Subtract .910 \_\_\_\_\_
- e. Divide by .899 \_\_\_\_\_
- f. Multiply by 3.458 \_\_\_\_\_

13. Funds Balance to Total Revenues

- a. Total Funds (from 5) \_\_\_\_\_
- b. Total Revenues (from 1c) \_\_\_\_\_
- c. Divide 13a by 13b \_\_\_\_\_
- d. Subtract .891 \_\_\_\_\_
- e. Divide by 9.156 \_\_\_\_\_
- f. Multiply by 3.270 \_\_\_\_\_

14. Funds Balance to Total Expenses

- a. Total Funds (from 5) \_\_\_\_\_
- b. Total Expenses (from 2c) \_\_\_\_\_
- c. Divide 14a by 14b \_\_\_\_\_
- d. Subtract .866 \_\_\_\_\_
- e. Divide by 6.409 \_\_\_\_\_
- f. Multiply by 3.270 \_\_\_\_\_

15. Total Funds to Population

- a. Total Funds (from 5) \_\_\_\_\_
- b. Population (from 6) \_\_\_\_\_
- c. Divide 15a by 15b \_\_\_\_\_
- d. Subtract 270 \_\_\_\_\_
- e. Divide by 4,548 \_\_\_\_\_
- f. Multiply by 1.866 \_\_\_\_\_

16. Add 7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937 \_\_\_\_\_

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in R.61-92.280.105(c) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

(d) If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(e) The Department may require reports of financial condition at any time from the local government owner or operator. If the Department finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of section 280.105(b) and (c), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(f) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the Department that it no longer meets the requirements of the financial test, the owner or operator must notify the Department of such failure within 10 days.

#### **SECTION 280.106. LOCAL GOVERNMENT GUARANTEE.**

(a) A local government owner or operator may satisfy the requirements of section 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be a local government having a "substantial governmental relationship" with the owner or operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

(1) demonstrate that it meets the bond rating test requirement of section 280.104 and deliver a copy of the chief financial officer's letter as contained in section 280.104(c) to the local government owner or operator; or

(2) demonstrate that it meets the worksheet test requirements of section 280.105 and deliver a copy of the chief financial officer's letter as contained in section 280.105(c) to the local government owner or operator; or

(3) demonstrate that it meets the local government fund requirements of sections 280.107(a), 280.107(b), or 280.107(c) and deliver a copy of the chief financial officer's letter as contained in section 280.107 to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under any of sections 280.104, 280.105, 280.107(a), 280.107(b), or 280.107(c), as the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 280.114(c).

(c) The guarantee agreement must be worded as specified in paragraph (d) or (e) of this section, depending on which of the following alternative guarantee arrangements is selected:

(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the Department, the guarantee shall be worded as specified in paragraph (d) of this section.

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the Department for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in paragraph (e) of this section.

(d) If the guarantor is a local government, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

#### Local Government Guarantee With Standby Trust Made by a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of South Carolina, herein referred to as guarantor, to the Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

#### Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of R.61-92.280.104, the local government financial test requirements of R.61-92.280.105, or the local government fund under R.61-92.280.107(a), R.61-92.280.107(b), or R.61-92.280.107(c)].

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280 and the name and address of the facility.] This guarantee satisfies R.61-92.280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Department and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of R.61-92.280.112, in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with R.61-92.280, Subpart F, the guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of R.61-92.280.112, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in

settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Department, shall fund a standby trust in accordance with the provisions of R.61-92.280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to R.61-92.280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of R.61-92.280, Subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under workers' compensation, disability benefits, or unemployment compensation law or other law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from and in the course of employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in R.61-92 Part 280.106(d) as such regulations were constituted on the effective date shown immediately below.

Effective date: \_\_\_\_\_

[Name of guarantor]

[Authorized signature of guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(e) If the guarantor is a local government, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

#### Local Government Guarantee Without Standby Trust Made by a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of South Carolina, herein referred to as guarantor, to the Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

#### Recitals

(1) Guarantor meets or exceeds (select one: the local government bond rating test requirements of R.61-92.280.104, the local government financial test requirements of R.61-92.280.105, the local government fund under R.61-92.280.107(a), R.61-92.280.107(b), or R.61-92.280.107(c).

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies R.61-92.280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location arising from operating the above-identified underground storage tank(s) in the amount of (insert: dollar amount) per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Department and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the Department shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with R.61-92.280, Subpart F, the guarantor upon written instructions from the Department shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgement or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon

written instructions from the Department shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to R.61-92.280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of R.61-92.280, Subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in R.61-92.280.106(e) as such regulations were constituted on the effective date shown immediately below.

Effective date: \_\_\_\_\_

[Name of guarantor]

[Authorized signature for guarantor]  
[Name of person signing]  
[Title of person signing]  
Signature of witness or notary: \_\_\_\_\_

**SECTION 280.107. LOCAL GOVERNMENT FUND.**

A local government owner or operator may satisfy the requirements of section 280.93 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in paragraph (b), a dedicated fund may not be co-mingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

(a) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks and is funded for the full amount of coverage required under section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

(b) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks and is funded for five times the full amount of coverage required under section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under section 280.93, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or

(c) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully funded. This seven year period is hereafter referred to as the "pay-in-period." The amount of each payment must be determined by this formula:

$$\frac{TF - CF}{Y}$$

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and;

(1) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, or

(2) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the

legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

(d) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this local government fund mechanism:

[List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for ten times the full amount of coverage required under section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage," or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

Amount in Fund (market value of fund at close of last fiscal year): \_\_\_\_\_  
(If fund balance is incrementally funded as specified in section 280.107(c), insert:

Amount added to fund in the most recently completed fiscal year): \_\_\_\_\_  
Number of years remaining in the pay-in-period: \_\_\_\_\_

A copy of the state constitutional provision, or local government statute, charter, ordinance, or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in R.61-92.280.107(d) as such regulations were constituted on the date shown immediately below.

[Date] \_\_\_\_\_  
[Signature] \_\_\_\_\_  
[Name] \_\_\_\_\_  
[Title] \_\_\_\_\_

**SECTION 280.108. SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISM BY OWNER OR OPERATOR.**

(a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subpart, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of section 280.93.

(b) After obtaining alternate financial assurance as specified in this subpart, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

**SECTION 280.109. CANCELLATION OR NONRENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE.**

(a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in section 280.114, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the Department of such failure and submit:

(1) The name and address of the provider of financial assurance;

(2) The effective date of termination; and

(3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with section 280.107(b).

**SECTION 280.110. REPORTING BY OWNER OR OPERATOR.**

(a) An owner or operator must submit the appropriate forms listed in section 280.111(b) documenting current evidence of financial responsibility to the Department:

(1) Within 30 days after the owner or operator identifies a release from an UST required to be reported under sections 280.53 or 280.61;

(2) If the owner or operator fails to obtain alternate coverage as required by this subpart, within 30 days after the owner or operator receives notice of:

(i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

(ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(iii) Failure of a guarantor to meet the requirements of the financial test,

(iv) Other incapacity of a provider of financial assurance; or

(3) As required by sections 280.95(g) and 280.109(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this Part as specified in the new tank notification form when notifying the Department of the installation of a new UST under section 280.22.

(c) The Department may require an owner or operator to submit evidence of financial assurance as described in section 280.111(b) or other information relevant to compliance with this subpart at any time.

#### **SECTION 280.111. RECORDKEEPING.**

(a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart for a UST until released from the requirements of this subpart under section 280.113. An owner or operator must maintain such evidence at the UST site or the owner's or operator's place of business. Records maintained off-site must be made available upon request of the Department.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in sections 280.95 through 280.100, or section 280.102, or sections 280.104 through 280.107, must maintain a copy of the instrument worded as specified.

(2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

(3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) A local government owner or operator using a local government guarantee under section 280.106(d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test under section 280.104 must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(6) A local government owner or operator using the local government guarantee under section 280.106, where the guarantor's demonstration of financial responsibility relies on the bond rating test under section 280.104 must maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.

(7) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(8) An owner or operator covered by the SUPERB fund must maintain on file at the operating facility a copy of the Certification of Financial Responsibility required under section 280.101(d) and supplied in section 280.111(b)(11) below.

(9) An owner or operator using a local government fund under section 280.107 must maintain the following documents:

(i) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund, and

(ii) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under section 280.107(a)(3) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

(iii) If the fund is established under section 280.107(a)(3) using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under section 280.107(a)(3)(i)), or attestation by the State Attorney General as specified under section 280.107(a)(3)(ii).

(10) A local government owner or operator using the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statement for the most recent completed financial reporting year showing the amount of the fund.

(11)(i) An owner or operator using an assurance mechanism specified in sections 280.95 through 280.107 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**CERTIFICATION OF FINANCIAL RESPONSIBILITY**

Complete and return one copy to the Department. Keep one copy at your underground storage tank site.

Site Name \_\_\_\_\_ Site # \_\_\_\_\_

Site Address \_\_\_\_\_

Choose one or a combination of assurance mechanisms to demonstrate financial responsibility under R.61-92.280, subpart H of the South Carolina Underground Storage Tank Control Regulations (SCUSTCR). Complete the chart for each mechanism selected.

MECHANISM	NAME OF ISSUER	AMOUNT OF COVERAGE	PERIOD OF COVERAGE
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1. State fund (SUPERB)--[If you select this, show deductible coverage here.]

2. Self insurance

3. Guarantee

4. Pollution insurance or risk retention group

5. Surety bond

6. Letter of credit

7. Trust fund

8. Local government options

\_\_\_\_\_ hereby certifies compliance with the requirements of Subpart H of  
 [owner or operator]  
 SCUSTCR part 280.

\_\_\_\_\_  
 [Signature of owner or operator]

\_\_\_\_\_  
 [Signature of witness or notary]

\_\_\_\_\_  
 [Name of owner or operator]

\_\_\_\_\_  
 [Name of witness or notary]

\_\_\_\_\_  
 [Title]

\_\_\_\_\_  
 [Date]

\_\_\_\_\_  
 [Date]

(ii) The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s). As stated in section 280.110, a copy must be sent to the Department under the following circumstances: (1) you install a new tank system; (2)

you have confirmed that there has been a release; (3) you change financial mechanisms; (4) the Environmental Protection Agency or the Department requests your records. No mechanism may require expenditure of funds from the SUPERB Account or the SUPERB Financial Responsibility Fund prior to exhausting that mechanism.

**SECTION 280.112. DRAWING ON FINANCIAL ASSURANCE MECHANISMS.**

(a) Except as specified in paragraph (d) of this section, the Department shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Department up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(1)(i) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(ii) The Department determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the Department pursuant to Subparts E or F of a release from a UST covered by the mechanism; or

(2) The conditions of paragraph (b)(1) or (b)(2)(i) or (ii) of this section are satisfied.

(b) The Department may draw on a standby trust fund when:

(1) The Department makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under R.61-92.280, Subpart F; or

(2) The Department has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**CERTIFICATION OF VALID CLAIM**

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[\_\_\_\_].

[Signatures]	[Signature(s)]
Owner or Operator	Claimant(s)
Attorney for Owner or Operator	Attorney(s) for Claimant(s)

(Notary) Date (Notary) Date

or

(ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from a UST covered by financial

assurance under this subpart and the Department determines that the owner or operator has not satisfied the judgment.

(c) If the Department determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Department shall pay third-party liability claims in the order in which the Department receives certifications under paragraph (b)(2)(i) and valid court orders under paragraph (b)(2)(ii).

(d) A governmental entity acting as guarantor under section 280.106(e), the local government guarantee without standby trust, shall make payments as directed by the Department under the circumstances described in section 280.112(a), (b), and (c).

### **SECTION 280.113. RELEASE FROM THE REQUIREMENTS.**

An owner or operator is no longer required to maintain financial responsibility under this subpart for an UST after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by R.61-92.280, Subpart G.

### **SECTION 280.114. BANKRUPTCY OR OTHER INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE.**

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Department by certified mail of such commencement and submit the appropriate forms listed in section 280.111(b) documenting current financial responsibility.

(b) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 280.96.

(c) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the Department by certified mail of such commencement and submit the appropriate forms listed in section 280.111(b) documenting current financial responsibility.

(d) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 280.106.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subpart within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he must notify the Department.

(f) Within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

**SECTION 280.115. REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS.**

(a) If at any time after a standby trust is funded upon the instruction of the Department with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) Replenish the value of financial assurance to equal the full amount of coverage required, or

(2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by section 280.93 of this Subpart. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

**SECTION 280.116. SUSPENSION OF ENFORCEMENT.**

[Reserved]

## **SUBPART I Lender Liability**

### **SECTION 280.200.DEFINITIONS.**

(a) UST technical standards, as used in this subpart, refers to the UST requirements under R.61-92 part 280 Subparts B, C, D, G, and section 280.50 of subpart E.

(b) Petroleum production, refining, and marketing.

(1) Petroleum production means the production of crude oil or other forms of petroleum (as defined in section 280.12) as well as the production of petroleum products from purchased materials.

(2) Petroleum refining means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) Petroleum marketing means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) Indicia of ownership means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) A holder is a person who, upon the effective date of this regulation or in the future, maintains indicia of ownership (as defined in section 280.200(c)) primarily to protect a security interest (as defined in section 280.200(f)(1)) in a petroleum or petroleum product UST or UST system or facility or property on which a petroleum or petroleum product UST or UST system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) A borrower, debtor, or obligor is a person whose UST or UST system or facility or property on which the UST or UST system is located is encumbered by a security interest. These terms may be used interchangeably.

(f) Primarily to protect a security interest means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) Security interest means an interest in a petroleum or petroleum product UST or UST system or in the facility or property on which a petroleum or petroleum product UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing

arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.

(2) Primarily to protect a security interest, as used in this subpart, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

(g) "Operation" means, for purposes of this subpart, the use, storage, filling, or dispensing of petroleum or a petroleum product contained in an UST or UST system.

### **SECTION 280.210. PARTICIPATION IN MANAGEMENT.**

The term "participating in the management of an UST or UST system" means that, subsequent to the effective date of this subpart, the holder is engaging in decision-making control of, or activities related to, operation of the UST or UST system, as defined herein.

(a) Actions that are participation in management.

(1) Participation in the management of an UST or UST system means, for purposes of this subpart, actual participation by the holder in the management or control of decision-making related to the operation of an UST or UST system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control UST or UST system operations. A holder is participating in the management of the UST or UST system only if the holder either:

(i) Exercises decision-making control over the operational (as opposed to financial or administrative) aspects of the UST or UST system, such that the holder has undertaken responsibility for all or substantially all of the management of the UST or UST system; or

(ii) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision-making of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

(2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum or a petroleum product contained in an UST or UST system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with achieving or maintaining environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in R.61-92 part 280.

(b) Actions that are not participation in management pre-foreclosure.

(1) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subpart. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or

UST system or facility or property on which the UST or UST system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the UST or UST system or facility or property on which the UST or UST system is located.

(2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this subpart. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(i) Policing the security interest or loan.

(A) A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 280.210(a). Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system or facility or property on which the UST or UST system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(B) Policing activities also include undertaking by the holder of UST environmental compliance actions and voluntary environmental actions taken in compliance with R.61-92 part 280, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in section 280.210(a) and section 280.230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in R.61-92 part 280. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

(ii) Loan work out. A holder who engages in work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 280.210(a). For purposes of this rule, "work out" refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right

or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) Foreclosure on an UST or UST system or facility or property on which an UST or UST system is located, and participation in management activities post-foreclosure.

(1) Foreclosure.

(i) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this subpart, the term "foreclosure" means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, UST facility, and property on which the UST or UST system is located. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease an UST or UST system or facility or property on which the UST or UST system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system or facility or property on which the UST or UST system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in section 280.210(a)) prior to or after foreclosure.

(ii) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner an UST or UST system or facility or property on which the UST or UST system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, or may employ the means specified in section 280.210(c)(2). A holder that outbids, rejects, or fails to act upon a written bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located, as provided in section 280.210(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

(2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), an UST or UST system or facility or property on which the UST or UST system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured UST or UST system or facility or property on which the UST or UST system is located. A holder may also arrange for an existing or new operator to continue or initiate operation of the UST or UST system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this subpart.

(i) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within 12 months following foreclosure, listing the UST or UST system or the facility or property on which the UST or UST system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system or facility or property on which the UST or UST system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the UST or UST system or facility or property on which the UST or UST system is located, or a newspaper of general

circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the UST or UST system or facility or property on which the UST or UST system is located. For purposes of this provision, the 12-month period begins to run from the effective date of this subpart or from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, whichever is later, provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the UST, UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the 12-month period begins to run from the effective date of this subpart or from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(ii) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured UST or UST system or facility or property on which the UST or UST system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(A) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system or facility or property on which the UST or UST system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the UST or UST system or facility or property on which the UST or UST system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an UST or UST system or facility or property on which the UST or UST system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the UST or UST system or facility or property on which the UST or UST system is located), and corrective action costs incurred under sections 280.51 through 280.67 or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this paragraph.

(B) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within 90 days of receipt, a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located received at any time after six months following foreclosure, as defined in section 280.210(c). A "written, bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed UST or UST system or facility or property on which the UST or UST system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates

to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from the effective date of this subpart or from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, whichever is later, provided that the holder was acting diligently to acquire marketable title or deed and to obtain access to the UST or UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the six-month period begins to run from the effective date of this subpart or from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of an UST or UST system or facility or property on which the UST or UST system is located when undertaking actions under R.61-92 part 280, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in section 280.210(a) and section 280.230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in R.61-92 part 280. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

**SECTION 280.220. OWNERSHIP OF AN UNDERGROUND STORAGE TANK OR UNDERGROUND STORAGE TANK SYSTEM OR FACILITY OR PROPERTY ON WHICH AN UNDERGROUND STORAGE TANK OR UNDERGROUND STORAGE TANK SYSTEM IS LOCATED.**

Ownership of an UST or UST system or facility or property on which an UST or UST system is located. A holder is not an "owner" of a petroleum or a petroleum product UST or UST system or facility or property on which a petroleum or a petroleum product UST or UST system is located for purposes of compliance with the UST technical standards as defined in section 280.200(a), the UST corrective action requirements under sections 280.51 through 280.67, and the UST financial responsibility requirements under sections 280.90 through 280.111, provided the person:

- (a) Does not participate in the management of the UST or UST system as defined in section 280.210; and
- (b) Does not engage in petroleum production, refining, and marketing as defined in section 280.200(b).

**SECTION 280.230. OPERATING AN UNDERGROUND STORAGE TANK OR UNDERGROUND STORAGE TANK SYSTEM.**

(a) Operating an UST or UST system prior to foreclosure. A holder, prior to foreclosure, as defined in section 280.210(c), is not an "operator" of a petroleum or a petroleum product UST or UST system for purposes of compliance with the UST technical standards as defined in section 280.200(a), the UST corrective action requirements under sections 280.51 through 280.67, and the UST financial responsibility requirements under sections 280.90 through 280.111, provided that, after the effective date of this subpart, the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(b) Operating an UST or UST system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in section 280.210(c), acquires a petroleum or a petroleum product UST or UST system or facility or property on which a petroleum or a petroleum product UST or UST system is located.

(1) A holder is not an "operator" of a petroleum or a petroleum product UST or UST system for purposes of compliance with R.61-92 part 280 if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the UST or UST system, and who can be held responsible for compliance with applicable requirements of R.61-92 part 280.

(2) If another operator does not exist, as provided for under paragraph (b)(1) of this section, a holder is not an "operator" of the UST or UST system, for purposes of compliance with the UST technical standards as defined in section 280.200(a), the UST corrective action requirements under sections 280.51 through 280.67, and the UST financial responsibility requirements under sections 280.90 through 280.111, provided that the holder:

(i) Empties all of its known USTs and UST systems within 60 calendar days after foreclosure or within 60 calendar days after the effective date of this subpart, whichever is later, or another reasonable time period specified by the implementing agency, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and

(ii) Empties those USTs and UST systems that are discovered after foreclosure within 60 calendar days after discovery or within 60 calendar days after the effective date of this subpart, whichever is later, or another reasonable time period specified by the implementing agency, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.

(3) If another operator does not exist, as provided for under paragraph (b)(1) of this section, in addition to satisfying the conditions under paragraph (b)(2) of this section, the holder must either:

(i) Permanently close the UST or UST system in accordance with sections 280.71 through 280.74, except section 280.72(b); or

(ii) Temporarily close the UST or UST system in accordance with the following applicable provisions of section 280.70:

(A) Continue operation and maintenance of corrosion protection in accordance with section 280.31;

(B) Report suspected releases to the implementing agency; and

(C) Conduct a site assessment in accordance with section 280.72(a) if the UST system is temporarily closed for more than 12 months and the UST system does not meet either the performance standards in section 280.20 for new UST systems or the upgrading requirements in section 280.21, except that the spill and overfill equipment requirements do not have to be met. The holder must report any suspected releases to the implementing agency. For purposes of this provision, the 12-month

period begins to run from the effective date of this subpart or from the date on which the UST system is emptied and secured under paragraph (b)(2) of this section, whichever is later.

(4) The UST system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the UST or UST system or facility or property on which the UST or UST system is located. Once a subsequent purchaser acquires marketable title to the UST or UST system or facility or property on which the UST or UST system is located, the purchaser must decide whether to operate or close the UST or UST system in accordance with applicable requirements in R.61-92 part 280.

## **SUBPART J Variances -- Violations and Penalties -- Appeals**

### **SECTION 280.300. VARIANCES.**

The Department may vary the application of any provisions of these regulations, when, in its opinion, the applicant has demonstrated that an equivalent degree of protection will be provided to the State's waters. Any variance granted or denied by the Department shall be in writing and shall contain a brief statement of the reasons for the approval or denial.

### **SECTION 280.301. VIOLATIONS AND PENALTIES.**

Any person or persons violating these regulations shall be subject to the penalties provided in Title 44 Chapter 2 Section 140 of the Code of Laws of South Carolina, as amended.

### **SECTION 280.302. APPEALS.**

(a) A decision involving the issuance, denial, renewal, modification, suspension, or revocation of a permit or registration may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1 and Title 1, Chapter 23.

(b) Any person to whom an order is issued may appeal it pursuant to applicable law, including S.C. Code Title 44, Chapter 1 and Title 1, Chapter 23.